Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1970
No. 627

THRIFTIMART, INC., a corporation doing business as SMART & FINAL IRIS CO., GILBERT P. STEWART, WILLIAM TODD, SR., and ROBERT D. JENSEN, individuals,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITION FOR REHEARING ON DENIAL OF WRIT OF CERTIORARI (RULE 58).

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

Thriftimart, Inc., a corporation doing business as Smart & Final Iris Co., Gilbert P. Stewart, William Todd, Sr., and Robert D. Jensen, individuals, (hereinafter "petitioners") petition this Court for rehearing of the order denying their Petition for Writ of Certiorari made by this Court November 23, 1970. This Petition

is based on the grounds permitted by Rule 58(2), to wit:

A. Intervening circumstances of substantial and controlling effect.

B. Substantial grounds available to petitioners though not previously presented.

I.

Intervening Circumstances.

A. This Court Has Failed to Act Upon a Matter Requiring Resolution in This Term.

This case presents a clear cut opportunity for this court to accept or reject the decisional discrimination by the Ninth Circuit in favor of criminals committing crimes of violence and against those accused of acts made crimes for the purpose of business regulation. In the opinion of the Ninth Circuit in this case, those accused of "white collar crimes" are treated differently than those accused of "blue collar crimes". We do not understand this discrimination. It is clearly a return to *Frank v. Maryland*, 359 U.S. 360, 79 S. Ct. 804 (1959) which was expressly overruled in *See v. City of Seattle*, 387 U.S. 541, 87 S. Ct. 1737 (1967) and *Camara v. Municipal Court*, 387 U.S. 523, 87 S. Ct. 1727 (1967).

This problem area has become a jungle. Different circuits have arrived at different conclusions by simply taking what they choose out of various parts of these decisions and others. The one opinion that calls a spade a spade is the one written by the Ninth Circuit

in this case which was unable to distinguish the facts of this case on principle from those of violent crimes, crimes involving drugs and marijuana and other depraved activity. The court being unable to distinguish upon principle it simply held that there was a difference between "white collar crimes" and "blue collar crimes". What it really held was that those persons accused of crimes for the purpose of regulation of business being responsible people have no constitutional rights but those persons who engaged in crimes of violence however heinous are to be protected. Usually opinions protecting people accused of crimes of violence are based on the idea that this will ultimately protect the innocent responsible and honest citizen. But the Ninth Circuit here says that isn't the case. The rationale therefore of constitutional rights applied to criminal cases has been undercut.

Since the problem was so precisely posed we assumed that this court would be interested in reviewing this case to give guidance to the circuits.

Two opportunities were presented in this term. One was this case where the court simply failed to make a finding at all as to whether or not there was consent to the search and seizure but the facts showed that there could be no consent measured by the decisions of the Court of Appeals for the Ninth Circuit and the Court of Appeals for the Eighth Circuit.

Schoepflin & Smith v. United States, 391 F. 2d 398 (CCA 9, 1968).

United States v. J. B. Kramer Grocery Co., Inc., 294 F. Supp. 65 (USDC Ark., 1969) affirmed 418 F. 2d 987 (CCA 8, 1969).

The other case submitted to this Court for this term was *A. M. Lewis v. United States*, Docket No. 511, October Term 1970. In that case the trial court made a finding that there was no consent, still the Ninth Circuit reversed and this Court denied certiorari.

Despite a growing need for resolution of the problems presented by these cases, this Court in granting certiorari has continued to be obsessed and engrossed with nothing but "blue collar" crimes, to the exclusion of the problems raised here.

The best information we can obtain with respect to cases involving search and seizure, warrantless search and like problems shows that there are on the docket for the October Term 1970 the following cases:

Hill v. California, No. 51, Certiorari granted October 13, 1969, argued January 19, 1970, restored to calendar for reargument June 15, 1970, reargued Ocober 21, 1970.

Williams v. U.S., Docket No. 81, Certiorari granted March 23, 1970, argued October 21, 1970.

Elkanich v. U.S., Docket No. 82, Certiorari granted February 2, 1970, argued October 21, 1970.

Whitley v. Warden of Wyoming State Penitentiary, Docket No. 136, Certiorari granted April 27, 1970.

In addition the following cases are pending. Again, each is a blue collar case involving searches and seizures. Certiorari has been neither granted nor denied.

Koran v. Florida, Docket No. 50;
Teran v. California, Docket No. 86;
Wild v. U.S., Docket No. 104;
Porter v. Ashmore, Docket No. 110;
McGrew v. City of Jackson, Docket No. 116;
Hosey v. City of Jackson, Docket No. 134;
Turner v. U.S., Docket No. 228;
Tuck v. Oregon, Docket No. 411;
Mayfield v. Virginia; Docket No. 834;
Kelley v. U.S., Docket No. 880;
Jaskiewicz v. U.S., Docket No. 884.

These cases actually require nothing but a further review of prior decisions where the rules have been carefully stated. This is mere repetition.

In our case and in the case of *A. M. Lewis v. U.S.,* Docket No. 511, certiorari was denied. This area requires attention. It involves literally hundreds of thousands of regulatory agencies and millions of people all over the country. It involves regulations of all kinds from taxes to food and drug to weights and measures to health rules to building safety to building and other types of specifications, regulations concerning the grading and development of land and on into an almost limitless number of situations where the average man is accused of crime on some claim based upon an inspector's illegal intrusion. In spite of this the Court has rejected our petition for certiorari and instead is simply respading old ground in the search and seizure cases with respect to which it has granted certiorari.

II.

Substantial Grounds.

In preparing the petition for certiorari we sought to make it as brief as possible in accordance with the rules of this court. Among the grounds available to the petitioners and probably not adequately expressed in the petition is the fact that this matter should be resolved for the reason that it is not just a problem involving officers of companies or businessmen of substantial means. On the contrary, this problem extends right down to the most modest employee who may or may not be charged with some responsibility in connection with the maintenance of inventory or property. The white collar people involved are not usually the senior executives. They are ordinary people who suddenly find themselves charged with an offense which could not have been prevented. The offense is one which does not require intent. As we have indicated in the last paragraph, this includes literally hundreds of thousands of regulatory agencies of all kinds. Their demands for punishment are punitive in the extreme. They result in charging people who have prided themselves in all their dealings with honesty, integrity and respect for the law. Suddenly they find themselves entrapped in a situation which they could not have controlled if they tried, with respect to which there is no defense under the decisions, and suddenly the law becomes a cruel oppressive and unjust instrument of vengeance on the part of an administrative officer. They are then told by the Court of Appeals for Ninth Circuit that they have no rights because they are white collar workers. This Court then denies certiorari. True they may not make as much money or even have as large earnings as blue collar workers. They are not

people who are guilty of any kind of wrong doing or violence. They are simply made criminals by a *malum prohibitum* statute badly administered and worse inspected. Their conviction is based on a flagrant violation of their civil and constitutional rights. We say that these substantial grounds cry out to the court to consider and determine this matter. Make a determination that can be sufficiently definitive that it can be followed by all of the federal, state and local agencies and by the people who are employees of companies all over the country so that they may continue with their law abiding attitudes and their respect for the courts.

III.

Conclusion.

We pray the Court that it grant this Petition for Rehearing of the order denying certiorari, that it grant certiorari, and that the cause be determined on its merits.

Respectfully submitted,

WILLIAM J. CURRER, JR.,
Counsel for Petitioners, Thriftimart, Inc., Gilbert P. Stewart, William Todd, Sr., and Robert D. Jensen.

Certificate of Counsel.

I, WILLIAM J. CURRER, JR., do hereby certify:

1. I am a member of the bar of the Supreme Court of the United States and duly enrolled upon the roll of attorneys and counsellors of that Court.

2. I represent before this Court Thriftimart, Inc., Gilbert P. Stewart, William Todd, Sr., and Robert D. Jensen.

3. I have prepared the foregoing Petition for Rehearing and it is presented in good faith and not for delay.

4. The said petition is restricted to the grounds specified in Rule 58(2).

5. My manuscript signature has been manually signed by me on one of the forty copies of the said petition and this certificate filed with the clerk as required by Rule 58.

Dated: December 17, 1970.

WILLIAM J. CURRER, JR.,
Counsel for Thriftimart, Inc., Gilbert P. Stewart, William Todd, Sr., and Robert D. Jensen.